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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/092,546	06/05/1998	BEAT KINDLER	6348	6213

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EXAMINER

THOMPSON, MICHAEL M

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 12/01/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/902,546

Applicant(s)

BRAUN, DAVID

Examiner

Michael M. Thompson

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 October 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____


Claim(s) objected to: _____

Claim(s) rejected: 1,2,6-9,15-18,20-21.Claim(s) withdrawn from consideration: 10-14,19 and 22-25.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): In view of Applicant's arguments, Applicant has overcome the objections to both the drawings, specification, to include the objection to Claim 21. Furthermore, Applicant's amendments and arguments with respect to the 112 second paragraph rejection of Claim 8 are convincing and therefore the rejection has been withdrawn..

Continuation of 5. does NOT place the application in condition for allowance because: In the least, the Examiner respectfully disagrees with Applicant's interpretation of the rejection of claims 1, 5, and 16. While the Examiner better understands the spirit of Applicant's invention, the Examiner has broadly interpreted the valve mechanism of Applicant's invention. Whether the valve mechanism is intended to be responsive to pressure exerted or otherwise, the Examiner would like to point out that the Michel et al. ('874) device is in fact a device that is "valved" in such a manner that is consistent with Applicant's rejected claim limitations. When one considers the Michel device as a whole which places particular importance on the exertion or pressure (through generation of gas, piston or otherwise) to drive fluid from the container then one only need consider a valve mechanism illustrated by the Michel device. In particular, Column 5, lines 64-68 teach a "valved" mechanism which is responsible for determining and/or controlling the flow rate. The connecting member (58) contains a constricted or throttle zone which....is constituted by a glass capillary embedded in the synthetic resin part (58). As Applicant might appreciate a "glass capillary" or any capillary is directly responsive to pressure. The very nature of controlling the flow rate lies in the fact that a certain gas pressure must be exerted to overcome the resistance through the capillary to achieve flow. In much the same way, the glass capillary may further control the flowrate once the initial resistance has been overcome. Glass Capillaries can consist of precision glass capillary tube(s). They can be supplied as circular or square thin plates and offer sieve-like filtration with a positive particle size cut-off. Glass capillary tube(s) are strong, self-supporting devices with exceptional thermal and chemical stability. In addition, as described in Column 6, lines 1-6, this capillary system may be bypassed with a valve "offering the delivery 'bolus' discussed hereinabove" in connection with Figures 1, 2a, 4, and 5. This portion of the specification further defines an alternate configuration of the device wherein another (explicit) valve is being used. The Examiner's support for a second example of the "valve" operating in a similar if not identical functioning valve described above is inherent in the language indicated by Michel himself. Specifically Michel states, "a valve offering the delivery possibilities (bolus) discussed hereinabove." In proper context, this has been construed by the Examiner as a second valve that offers the delivery possibilities that were discussed immediately before the aforementioned paragraph which exhibits the flow characteristics of the capillary system or valve mentioned above. When one then considers the graph depicted in figure 2a showing a constant delivery rate permitted by the valve once the gas pressure is exerted in combination with the language immediately preceeding the designation of figure 2a, the Examiner has considered this to merely be a second example of a valve that exhibits the same behavior of the glass capillary valving mechanism. In addressing the Examiner's statements with respect to the "phenomenon" of fluid mechanics under pressure the Examiner concedes that Michel does not explicitly address fluid mechanics of a system with a valve mechanism that is under pressure. However, the Examiner might mention that all fluids that pass through "constricted" or "throttle" zones or valve mechanisms as indicated by Michel in column 5 and will experience a certain amount of resistance that must be overcome due to several frictional characteristics such as laminar flow, etc. when considering "real-life" fluid dynamics. It is these inherent characteristics of dynamic fluid flow that the Examiner relies upon when indicating that excessive pressure exerted on the fluid supply side will overcome this resistance exerted by not only the walls but the "constricted" "throttled" or "valve" zones. In briefly addressing the obviousness rejections the Examiner would like to point out that the motivation used by the Examiner is not improper hindsight. Applicant has stated that, "the Examiner has not fully appreciated the teaching of the specification and the functionality of the present invention." Applicant's invention is directed to a valve that will, "only open when a particular pressure is achieved on the fluid supply side." Applicant further states that, "Back-flow is exactly the opposite concept wherein fluid flow is prevented in the direction from the needle (or similar point) back into the fluid supply." However, Applicant admits that back-flow prevention may in fact be accomplished. It is the Examiner's contention that the Examiner has utilized a proper form of motivation to modify the references by focusing on the motivation of the prevention of back-flow. Therefore, the motivation for modification utilized by the Examiner is for reasons other than those indicated by Applicant as confirmed by Applicant's statements.


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PRIMARY EXAMINER
12/18/04